IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal From Order No. 18 of 2005

Sri Mahesh Chandra Pandey S/o Sri Gananand Pandey
R/o Village Majhere Garampani
District Nainital ... Appellants

Vs

1. Sri Yogesh Mishra
   S/o Sri Deshraj Mishra
   R/o House No. Type 2-16
   Telecom Colony Haldwani
   District Nainital
2. Divisional Manager
   the New India Assurance Company Ltd.
   Haldwani through Divisional Office
   Opposite Sessions Court Haldwani
   District Nainital ... Respondents

Sri A.K. Shah, learned counsel for the appellant
Sri T.A. Khan, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal under Section 173 of the Motor Vehicle Act has been filed by the appellant/claimant against the judgment and award dated 18.09.2004 passed by M.A.C.T./District Judge, Nainital in Case No. 108 of 2004 Mahesh Chandra Pandey Vs Yogesh Mishra & others whereby the appellant was awarded Rs. 15,000/- as compensation along with 9% interest from the date of filing the claim petition till the actual date of payment.

2. Brief facts of the case are that on 01.12.2000 the appellant was standing along with one Darshan Tripathi near the shop of Basant Goswami. At 10:30 a.m. Maruti van bearing registration No. UP02D, 2468 coming from the Bhawali side in a very rash and negligent manner hit the appellant, due to which he sustained injuries on his person. The appellant was admitted at P.H.C. Khairna. Thereafter he

was referred to Haldwani to Joshi Bone Hospital and Sushila Tiwari Hospital. The appellant has spent Rs. 50,000/- on his medical treatment. The appellant filed claim petition before the tribunal concerned and claimed Rs. 1,50,000/- as compensation.

3. The opposite party No. 1 did not file any written statement. The opposite party No. 2 contested the claim petition and filed its written statement stating therein that the driver of the vehicle was not having the valid driving licence. It has further been submitted that exorbitant amount of compensation has been claimed.

4. On the basis of the pleadings of the parties, the court concerned framed following issues:-

1. Whether on 01.12.2002 when the appellant was standing on Khairna Road along with other persons near the shop of Basant Goswami, suddenly Maruti Van bearing registration No. UP02D 2468 came from Bhowali side which was being driven in rash and negligent manner by its driver and dashed him, due to which the accident had occurred and the appellant sustained injuries?
2. Whether the appellant is entitled to receive compensation? If yes, then how much and from whom?
3. Whether at the time of accident, the driver was having the valid driving licence?
4. Whether the vehicle No. UP02D 2468 was insured with New India Insurance Company at the time of accident?
5. Any other relief?

5. After having perused the entire material available on record the tribunal concerned awarded Rs, 15,000/- along with 9% interest as compensation which is to be payable by New India Insurance Company Ltd. vide award dated 18.09.2004.

6. Heard Sri A.K. Shah, learned counsel for the appellant, Sri T.A. Khan, learned counsel for the respondents and perused the record.

7. The record reveals that the claimant/appellant has been awarded an amount of Rs. 15,000/- as compensation on account of the injuries sustained by him at the time of the accident. The amount of compensation has been awarded along with the interest of 9% per annum from the date of filing the petition till the actual date of payment. The submission of the learned counsel for the appellant is that the claimant/appellant had remained admitted in the hospital for about 7 days on account of injuries sustained by him in this accident but he has not been given any additional sum under the head of loss of income.

8. The evidence available on record shows that the appellant remained in the hospital w.e.f. 01.12.2002 to 06.12.2002. It is therefore, quiet clear that during this period the appellant certainly might have suffered the loss of his income. The appellant/claimant is a registered medical practitioner.

9. Therefore, keeping in view the aforesaid circumstances, I think, it would be just and proper to award an additional sum of Rs. 5,000/- for the loss of income of the claimant/appellant.

10. I accordingly partly allow the appeal and modify the impugned judgment and award to the extent that the claimant/appellant is entitled to a sum of Rs. 20,000/- in stead of Rs. 15,000/- as compensation on account of the injuries sustained by him in the accident.

11. The amount awarded to the claimant shall be paid by the insurer of the vehicle along with an interest of 9% per annum from the date of filing the petition till the actual date of payment.

(B.C. Kandpal, J.)

29.09.2006
ASWAL